IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 749 of 2001
In
SPECIAL CIVIL APPLICATION No. 12454 of 1994

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KAMAL H BHATT - Appellant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR ASHISH S JOSHI for Appellant(s) : 1,
RULE SERVED for Respondent(s) : 1,
LAW OFFICER BRANCH for Respondent(s) : 2,
MR JB PARDIWALA for Respondent(s) : 2,

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 19/06/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

This is appeal listed today on our Board at Sr. No.3 for the 13th time. When it was called out at about 2.30 pm, learned counsel for the appellant-delinquent was not present. However, learned AGP, Mr.Desai for the respondent-State of Gujarat and Mr.J.B.Pardiwala for Gujarat High Court were present.

In ordinary circumstances, the matter would have been dismissed for default in absence of the learned counsel for the appellant. Dismissing the appeal for default and then restoring it would be an exercise in futility.

Mr.Pardiwala, learned counsel for the respondent-Gujarat High Court has brought to our notice that two writ petitions; (1) Special Civil Application No.11218 of 1994 filed by Mr.C.G.Sharma-delinquent officer and (2) Special Civil Application No.12454 of 1994 filed by the present appellant-delinquent officer-Mr.Kamal H. Bhatt were dismissed by the learned Single Judge of this court (M.S.Shah, J.) by his common judgment and order dated 6.8.1999. Two separate Letters Patent Appeals were filed; one is the present Letters Patent Appeal filed by the present appellant-Mr.Kamal H. Bhatt; whereas another Letters Patent Appeal was filed by Mr.C.G.Sharma before the Division Bench of this court. Letters Patent Appeal No.1721 of 1999 filed by Mr.C.G.Sharma

was allowed by the Division Bench of this court and the common judgment and order passed by the learned Single Judge of this court dismissing both the writ petitions was quashed and set aside by the Division Bench of this court. Aggrieved by the same, High Court of Gujarat-present respondent No.2 had filed SLP before the Hon'ble Supreme Court of India, which was granted and the appeal filed by the High Court of Gujarat was allowed by the Hon'ble Apex Court on 17.11.2004 and the judgment and order passed by the Division Bench of this court in Letters Patent Appeal No.1721 of 1999 was quashed and set aside and the common judgment and order passed by the learned Single Judge was restored [see 2005(1) GLH 40 Registrar, High Court of Gujarat and Anr. vs. C.G.Sharma].

Once the matter is carried to the Hon'ble Supreme Court against the judgment and order passed by the learned Single Judge, which is ultimately restored by the Hon'ble Supreme Court by quashing and setting aside the judgment and order passed by the Division Bench in another Letters Patent Appeal, then in terms of the judgment of the Hon'ble Supreme Court in case of Mr.C.G.Sharma, this appeal has to be dismissed. Accordingly, it is dismissed.

(B.J.SHETHNA, J.)

(M.D.SHAH, J.)

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